

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6537

PETITION OF CLAUDIA WOLFF

OPINION OF THE BOARD

(Hearing Date: November 1, 2017)

(Effective Date of Opinion: November 9, 2017)

Case No. A-6537 is an application by Claudia Wolff (the "Petitioner") for two variances from the requirements of Section 59-4.4.9.B.2 of the Zoning Ordinance, needed to construct a detached garage. First, the Petitioner seeks a variance from the requirement in Section 59-4.4.9.B.2.a of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. In addition, the Petitioner seeks a variance to locate the proposed accessory structure within 51.58 feet of the front lot line, requiring a variance of 8.42 feet. Section 59-4.4.9.B.2 of the Zoning Ordinance requires that accessory structures be located sixty (60) feet from the front lot line.

The Board of Appeals held a hearing on the application on November 1, 2017. The Petitioner, who owns the subject property, appeared at the hearing with Sarah Moody, her architect.

Decision of the Board: Variances GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot P24, Wheatleys Subdivision, located at 3410 Oberon Street, Kensington, MD, 20895, in the R-60 Zone. It is 28,836 square feet in size, approximately 2.7 times larger than the next largest lot on the block, which is 10,567 square feet. See Exhibit 3.
2. The subject property is an elongated, irregular quadrilateral "ringed" with houses such that its yard comprises the inside of the entire block. The east side lot line runs north-south; the west side lot line is angled so that the lot widens as one moves from north to south. Both the east and the west side lot lines are significantly longer than the north (front) and south (rear) lot lines, which are

roughly parallel to each other and extend in a northwest-southeasterly direction. See Exhibits 4 and 7.

3. The Justification Statement describes the topography of the property as being lowest in the northwest corner, rising towards both the south and the east. It indicates that the western side of the property contains an existing eight (8) foot wide driveway, located approximately five (5) feet from the west side lot line and bounded on the east by a retaining wall, which is, in turn, approximately 13 feet from the property line. It describes the property as wooded, and indicates that more than half of the property is located behind the home, and is accessed via a gravel extension of the driveway. See Exhibit 3.
4. The Petitioner purchased the subject property in 2011, and has done nothing to modify the lot size, the topography, the location of the existing house, or the relationship of that house to neighboring lots. Per the Justification Statement:

The house is set back 71'-6" from the front property line, a distance approximately twice as much as the next deepest setback on the block. The minimum zoning front yard setback for a primary structure on this property is 25'. ... The proposed garage would be set back approximately 50' from the front lot line, which is twice as much as is required for a principal building.

See Exhibit 3.

5. The Justification Statement asserts that the proposed garage substantially conforms with the established historic or traditional development pattern of the neighborhood, as follows:

The nearby neighborhood of Martin's Addition in Chevy Chase has lot sizes that are in keeping with the large lot size of 3410 Oberon Street. There are a number of garages in this neighborhood that are next to or in front of the principal building and which are set back less than the required distance of 60' for an accessory structure.

The Petitioner includes photographs of some of these garages with her submission. See Exhibit 3.

6. The Justification Statement indicates that if the garage could not be constructed in the requested location, the most logical place to site it would be as close to the west side lot line as possible (presumably because that is where the driveway is), which would bring it closer to and therefore have a greater impact on Petitioner's abutting neighbors to the west. The Statement indicates that such a location would also limit accessibility to the rear yard because it would block the driveway. It further indicates that:

Granting the variance will keep the garage from being built 5' from the west lot line; the garage will be essentially invisible to the neighbors to the west. The setback of the proposed garage is approximately 50'-0", which is twice as much as the setback required for the principal building; in addition, this deep setback means the traffic pattern of cars onto the site will not change.

See Exhibit 3.

7. At the hearing, the Petitioner testified that she purchased the property in 2011, and that prior to her purchase, the previous owner had converted the then-existing attached garage, which was located on the front of the house, into a recreation room. She testified that the previous owner had also extended the hardscape in front of the house into a large parking pad, which she described as being out of character for the neighborhood. She stated that the original house was built in 1939, and had multiple, unusual additions. The Petitioner testified that her rear yard makes up the "inside" of the entire block, and that her property is "ringed" by other houses. See Exhibit 7.

The Petitioner testified that the proposed garage would look like an extension of the existing house, and that the garage door would not be visible from the street because it was on the side of the proposed garage, not the front. She testified that the garage will only be one story tall, and that this satisfied the only concern she had received from neighbors about her proposed construction, which was that the structure not be two stories.

The Petitioner testified that there are townhouses, and parking for those townhouses, across Oberon Street from her property.

8. Ms. Moody testified that the subject property is very large compared with neighboring properties, and that the deep setback of the existing house made it easier to accommodate a garage in front of the house on this property than it would be on neighboring properties. She testified that the topography of this property rises from northwest to southeast.

Ms. Moody testified that the proposed garage would have a gabled roof designed to match the gables on the existing house, and that from the street it would appear to be attached to the house. She testified that it will be un-conditioned space. She testified that because the garage will be set in from the road, it will not change traffic flow in and out of the property, and will not impact the neighbors. Ms. Moody testified that if the garage were moved further down the driveway so that it was behind the house, it would require a side lot line variance, and would be a greater imposition on the neighbors. She testified that if it were moved even farther back, into the rear yard, it would be further from the home, and again would have a greater impact on the neighbors than it would in the proposed location.

In response to Board questions asking why the garage could not be attached to the existing house, Ms. Moody testified that there is a significant grade change, which she estimated to be four or five feet, in the eight-foot gap between the location of the proposed garage and the existing house. See Exhibit 5. She testified that because of this grade change, attachment of the garage to the existing house would entail substantial, complicated construction and would necessitate excavation. She testified that attachment of the proposed garage would also require the relocation of existing utilities.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property is exceptional not only in its long, narrow shape, but also in its topography. The Board finds that the property is sloped to the point of requiring retaining walls and outdoor stairs (see Exhibits 3, 4 and 5), and that there is a significant grade change immediately in front of the existing house which is unique to the property. The Board further finds that the extension of this property behind most of the other properties on the block is unusual. The Board finds that these conditions constitute unusual or extraordinary circumstances peculiar to the subject property.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner purchased this property in 2011, and is not responsible for the size, shape, topography or layout of the subject property. There is no evidence in the record to suggest that the Petitioner created the special circumstances pertaining to the property.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the unusual topography of the subject property, and specifically the grade change immediately in front of the existing house, precludes the construction of an attached garage forward of the existing house, in an area of the property which would otherwise be available for such construction. The Board further finds that the eight foot separation between the proposed garage and the existing house, which is needed to accommodate these topographical challenges, is the minimum necessary to allow the construction of this detached garage to proceed and to overcome

the practical difficulty that would be imposed by full compliance with the locational restrictions for accessory structures set forth in the Zoning Ordinance.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the construction of this accessory structure continues the residential use of the home, and is consistent with the recommendations of the Kensington Sector Plan.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*


The Board finds that, per the Justification Statement, which asserted that the proposed garage "will be essentially invisible to the neighbors to the west," and the Zoning Vicinity Map, that the proposed location for this accessory structure will have less impact on abutting properties of the subject property than would otherwise lawful construction closer to the west side lot line (i.e. along the driveway). In addition, the Board finds, per the testimony of the Petitioner, that the only concern voiced about her proposed construction was that it not be two stories, which it is not. Finally, the Board notes that the proposed garage will be set back approximately 50 feet from the street, almost twice the setback required for a primary structure on this property, and that the confronting property contains townhouses and parking for those townhouses. Thus the Board finds that the granting of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances to allow an accessory structure to be located in front of the rear building line, and to be set back 51.58 feet from the front lot line, are **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony and exhibits of record, and by the testimony of her architect; and
2. Construction shall be in accordance with Exhibits 4 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, with Edwin S. Rosado, Bruce Goldensohn, and Katherine Freeman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 9th day of November, 2017.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.